

**REMARKS**

Upon entry of this Amendment, claims 23-30, 32, and 38-43 are all the claims pending in the application. Claims 31 and 33-37 are being canceled and claims 39-43 are added herein. On the front page of the Office Action Summary, it is stated that claims 23-30, 32 and 35-38 are withdrawn from consideration. However, within the Office Action claims 32 and 35-38 were rejected under 35 U.S.C. § 112, first paragraph. It is respectfully pointed out that only claims 23-30 were previously withdrawn from consideration by the examiner. By virtue of the §112 rejection, it appears that claims 32 and 35-38 were examined, however, no prior art rejections were asserted against these claims. Since claims 31 and 33-37 are being canceled, clarification of the status of claims 32 and 38 is requested in the next office action.

Claims 31, 33 and 34 presently stand rejected and claim 34 is further objected to because of informalities.

Claims 32, and 35-38 are rejected under 35 U.S.C. § 112, first paragraph.

Claims 32-34 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fazio et al. (USP 6,518,618).

For the reasons set forth below, Applicant respectfully traverses the rejections and requests favorable disposition of the application.

***Argument***

***§112***

Claims 32 and 35-38 are rejected under 35 U.S.C. §112, first paragraph, due to language in independent claim 32, from which all of claims 35-38 depends. Applicant has herein amended

claim 32 to remove the allegedly offending language. Specifically, the claim has been amended to require that the mask layer is formed “to cover a surface of said second region with leaving top surfaces of said first, second, third and fourth control gates and surfaces of said first, third, fourth and sixth diffusion regions uncovered.” Applicant submits that claim 32 satisfies all requirements of 35 U.S.C. §112. Accordingly, it is requested that the §112 rejection of claim 32 be withdrawn.

Claims 35-37 have been canceled, rendering the §112 rejection thereto moot.

Claim 38 depends from claim 32 and, by virtue of the amendment to claim 32, no longer suffers from the alleged §112, first paragraph, issue.

### **§102**

Claims 32 and 35-38 stand rejected under 35 U.S.C. § 102(e) over Fazio et al. Applicant has amended claim 32, as set forth above, to more clearly distinguish over the cited reference. In particular, claim 32, as amended, recites *forming a silicide layer on said top surface of said first, second, third and fourth control gates and said surfaces of said first, third, fifth and sixth diffusion regions, said surfaces of said second region being free from formation of said silicide region by existence of said mask layer*. Fazio et al. fails to teach or suggest this recited feature. Accordingly, claim 32 is patentable over the asserted prior art. Claim 38 is patentable at least by virtue of its dependence on claim 32.

### ***Patentability of New Claims***

For additional claim coverage merited by the scope of the invention, Applicant has added new claims 39-43. Applicant submits that the prior art does not disclose, teach, or otherwise

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suggest the combination of features contained therein. For example, none of the prior art references teach or otherwise suggest the features of new independent claims 39, 40, 42 and 43. New claim 41 is patentable at least by virtue of its dependence on patentable claim 32.

***Conclusion***

In view of the foregoing remarks, the application is believed to be in form for immediate allowance with claims 23-30, 32 and 38-43, and such action is hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, he is kindly requested to **contact the undersigned** at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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